House of Representatives

General Assembly

File No. 314

January Session, 2009

Substitute House Bill No. 6097

House of Representatives, March 30, 2009

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (d) of section 25-68d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(d) Any state agency proposing an activity or critical activity within or affecting the floodplain may apply to the commissioner for exemption from the provisions of subsection (b) of this section. Such application shall include a statement of the reasons why such agency is unable to comply with said subsection and any other information the commissioner deems necessary. The commissioner, at least thirty days before approving, approving with conditions or denying any such application, shall publish once in a newspaper having a substantial circulation in the affected area notice of: (1) The name of the applicant; (2) the location and nature of the requested exemption; (3) the tentative decision on the application; and (4) additional information the commissioner deems necessary to support the decision to approve,

approve with conditions or deny the application. There shall be a comment period following the public notice during which period interested persons and municipalities may submit written comments. After the comment period, the commissioner shall make a final determination to either approve the application, approve the application with conditions or deny the application. The commissioner may hold a public hearing prior to approving, approving with conditions or denying any application if in the discretion of the commissioner the public interest will be best served thereby, and the commissioner shall hold a public hearing upon receipt of a petition signed by at least twenty-five persons. Notice of such hearing shall be published at least thirty days before the hearing in a newspaper having a substantial circulation in the area affected. The commissioner may approve or approve with conditions such exemption if the commissioner determines that (A) the agency has shown that the activity or critical activity is in the public interest, will not injure persons or damage property in the area of such activity or critical activity, complies with the provisions of the National Flood Insurance Program, and, in the case of a loan or grant, the recipient of the loan or grant has been informed that increased flood insurance premiums may result from the activity or critical activity. An activity shall be considered to be in the public interest if it is a development subject to environmental remediation regulations adopted pursuant to section 22a-133k and is in or adjacent to an area identified as a regional center, neighborhood conservation area, growth area or rural community center in the State Plan of Conservation and Development pursuant to chapter 297, **[**or**]** (B) in the case of a flood control project, such project meets the criteria of subparagraph (A) of this subdivision and is more cost-effective to the state and municipalities than a project constructed to or above the base flood or base flood for a critical activity, or (C) the proposal is a change in land use of real property subject to environmental remediation requirements adopted pursuant to section 22a-133k that is not considered an intensive use. Reuse of mills and other brownfields, as defined in section 32-9kk, shall not require an exemption from floodplain management certification provided the

project renovates an existing structure or structures or the footprint of new construction does not exceed the historic footprint of the former structure on the brownfield, any residential living space is above the five hundred year flood elevations, and such renovation complies with the provisions of the National Flood Insurance Program. Following approval for exemption for a flood control project, the commissioner shall provide notice of the hazards of a flood greater than the capacity of the project design to each member of the legislature whose district will be affected by the project and to the following agencies and officials in the area to be protected by the project: The planning and zoning commission, the inland wetlands agency, the director of civil defense, the conservation commission, the fire department, the police department, the chief elected official and each member of the legislative body, and the regional planning agency. Notice shall be given to the general public by publication in a newspaper of general circulation in each municipality in the area in which the project is to be located.

Sec. 2. Subdivision (1) of section 22a-134 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(1) "Transfer of establishment" means any transaction or proceeding through which an establishment undergoes a change in ownership, but does not mean:

(A) Conveyance or extinguishment of an easement;

(B) Conveyance of an establishment through the exercise of eminent domain by a municipality, a foreclosure, as defined in subsection (b) of section 22a-452f or foreclosure of a municipal tax lien or through a tax warrant sale pursuant to section 12-157 or **[**, provided the establishment is within the pilot program established in subsection (c) of section 32-9cc,**]** a subsequent transfer by such municipality that has acquired the property through the exercise of eminent domain, foreclosed municipal tax liens or that has acquired title to the property through section 12-157, provided (i) the party acquiring the property

from the municipality did not establish or create the condition at the establishment and is not affiliated with such responsible person, and (ii) the establishment enters or remains in one of the voluntary remediation programs administered by the commissioner. For purposes of this section, municipality includes any entity created or operating under chapter 130 or 132;

(C) Conveyance of a deed in lieu of foreclosure to a lender, as defined in and that qualifies for the secured lender exemption pursuant to subsection (b) of section 22a-452f;

(D) Conveyance of a security interest, as defined in subdivision (7) of subsection (b) of section 22a-452f;

(E) Termination of a lease and conveyance, assignment or execution of a lease for a period less than ninety-nine years including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold, ninety-nine years, including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold;

(F) Any change in ownership approved by the Probate Court;

(G) Devolution of title to a surviving joint tenant, or to a trustee, executor or administrator under the terms of a testamentary trust or will, or by intestate succession;

(H) Corporate reorganization not substantially affecting the ownership of the establishment;

(I) The issuance of stock or other securities of an entity which owns or operates an establishment;

(J) The transfer of stock, securities or other ownership interests representing less than forty per cent of the ownership of the entity that owns or operates the establishment;

(K) Any conveyance of an interest in an establishment where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling or sibling of a parent of the transferee;

(L) Conveyance of an interest in an establishment to a trustee of an inter vivos trust created by the transferor solely for the benefit of one or more siblings, spouses, children, parents, grandchildren, children of a sibling or siblings of a parent of the transferor;

(M) Any conveyance of a portion of a parcel upon which portion no establishment is or has been located and upon which there has not occurred a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste, provided either the area of such portion is not greater than fifty per cent of the area of such parcel or written notice of such proposed conveyance and an environmental condition assessment form for such parcel is provided to the commissioner sixty days prior to such conveyance;

(N) Conveyance of a service station, as defined in subdivision (5) of this section;

(O) Any conveyance of an establishment which, prior to July 1, 1997, had been developed solely for residential use and such use has not changed;

(P) Any conveyance of an establishment to any entity created or operating under chapter 130 or 132, or to an urban rehabilitation agency, as defined in section 8-292, or to a municipality under section 32-224, or to the Connecticut Development Authority or any subsidiary of the authority;

(Q) Any conveyance of a parcel in connection with the acquisition of properties to effectuate the development of the overall project, as defined in section 32-651;

(R) The conversion of a general or limited partnership to a limited liability company under section 34-199;

(S) The transfer of general partnership property held in the names of all of its general partners to a general partnership which includes as general partners immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

(T) The transfer of general partnership property held in the names of all of its general partners to a limited liability company which includes as members immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

(U) Acquisition of an establishment by any governmental or quasi-governmental condemning authority;

(V) Conveyance of any real property or business operation that would qualify as an establishment solely as a result of (i) the generation of more than one hundred kilograms of universal waste in a calendar month, (ii) the storage, handling or transportation of universal waste generated at a different location, or (iii) activities undertaken at a universal waste transfer facility, provided any such real property or business operation does not otherwise qualify as an establishment; there has been no discharge, spillage, uncontrolled loss, seepage or filtration of a universal waste or a constituent of universal waste that is a hazardous substance at or from such real property or business operation; and universal waste is not also recycled, treated, except for treatment of a universal waste pursuant to 40 CFR 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at such real property or business operation; or

(W) Conveyance of a unit in a residential common interest community in accordance with section 22a-134i.

Sec. 3. Subsection (a) of section 32-9ee of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) **[**The**]** Any municipality or economic development agency that receives grants through the Office of Brownfield Remediation and

[Development's pilot program established in subsection (c) of section 32-9cc**]** Development shall be considered an innocent party and shall not be liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act, as long as the municipality or economic development agency did not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution that is subject to remediation under **[**this pilot program**]** section 22a-133k and funded by the Office of Brownfield Remediation and Development; does not exacerbate the conditions; and complies with reporting of significant environmental hazard requirements in section 22a-6u. To the extent that any conditions are exacerbated, the municipality or economic development agency shall only be responsible for responding to contamination directly caused by its activities.

Sec. 4. Section 22a-452 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) **[**Any**]** Subject only to the defenses set forth in subsections (b), (d) and (f) of this section, any person **[**, firm, corporation**]** or municipality **[**which**]** that contains or removes or otherwise mitigates the effects of oil or petroleum or chemical liquids or solid, liquid or gaseous products, hazardous substances or hazardous wastes resulting from any discharge, spillage, uncontrolled loss, seepage or filtration of such substance or material or waste shall be entitled to reimbursement or recovery from any person **[**, firm or corporation**]** for the reasonable costs expended or to be expended for such containment, removal, or mitigation, including the reasonable costs of investigation and monitoring, if such oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous substances or hazardous wastes pollution or contamination or other emergency **[**resulted from the negligence or other actions of such person, firm or corporation**]** (1) was directly or indirectly caused by such person, or (2) such person, regardless of fault, is (A) the owner or operator of a facility, (B) any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances

were disposed of, (C) any person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity at any facility owned or operated by another party or entity and containing such hazardous substances, or (D) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person from which there is a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous substances. When such pollution or contamination or emergency results from the joint [negligence or other] actions or omissions of two or more persons, [firms or corporations,] each shall be liable to the others for a pro rata share of the costs of containing, and removing or otherwise mitigating the effects of the same and for all damage caused thereby. For the purposes of this section, "hazardous substances" has the same meaning as in section 22a-134, as amended by this act, provided the municipal solid waste exemption of 42 USC 9607(p) shall apply and "owner and operator" and "facility" have the same meanings as in 42 USC 9601.

(b) No person [, firm or corporation which] who renders assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous [materials] wastes or hazardous substances, other than a discharge of oil as defined in section 22a-457b, to the surface waters of the state, or [which] who assists in preventing, cleaning-up or disposing of any such discharge shall be held liable, notwithstanding any other provision of law, for civil damages as a result of any act or omission by him in rendering such assistance or advice, except acts or omissions amounting to gross negligence or wilful or wanton misconduct, unless he is compensated for such assistance or advice for more than actual expenses. For the purpose of this subsection, and "discharge" means spillage, uncontrolled loss, seepage or filtration. [and "hazardous materials" means any material or substance designated as such by any state or federal law or regulation.]

(c) The immunity provided in this section shall not apply to (1) any person, firm or corporation responsible for such discharge, or under a duty to mitigate the effects of such discharge, (2) any agency or instrumentality of such person, firm or corporation, or (3) negligence in the operation of a motor vehicle.

(d) An action for reimbursement or recovery of the reasonable costs expended for containment, removal or mitigation, including the reasonable costs of investigation and monitoring, shall be commenced on or before the later of (1) six years after initiation of the physical on-site construction of the remedial action taken to contain, remove or mitigate the effects of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes or hazardous substances, or (2) three years after the completion of the containment, removal or mitigation activities.

(e) In any action brought pursuant to this section, the Superior Court may issue an order granting the reimbursement or recovery of reasonable costs to be incurred in the future.

(f) A person shall not be liable under this section when the person can establish by a preponderance of the evidence that the discharge, spillage, uncontrolled loss, seepage or filtration of a hazardous substance and the resulting damages were caused solely by (1) an act of God, (2) an act of war, (3) an act or omission of (A) a third party other than an employee or agent of the person, or (B) a third party whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, except that a person shall not be liable where the sole contractual arrangement with such third party arises from a published tariff and acceptance for carriage by a common carrier by rail, if the person establishes by a preponderance of the evidence that such person (i) exercised due care with respect to the hazardous substance taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (ii) took precautions against foreseeable acts or omissions of any such third party and the consequences that could

foreseeably result from such acts or omissions, or (4) any combination of the foregoing.

(g) This section shall apply to any action for the reimbursement or recovery of the reasonable costs for containment, removal or mitigation, including the reasonable costs of investigation and monitoring, except that it shall not apply to any action that has become final, and is no longer subject to appeal, on or before October 1, 2009.

Sec. 5. Section 22a-134b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) Failure of the transferor to comply with any of the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act, entitles the transferee to recover damages from the transferor, and renders the transferor of the establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages.

(b) An action to recover damages pursuant to subsection (a) of this section shall be commenced not later than six years after the later of (1) the due date for the filing of the appropriate transfer form under section 22a-134a, or (2) the actual filing date of the appropriate transfer form.

(c) This section shall apply to any action brought for the reimbursement or recovery of remediation costs and all direct and indirect damages provided this section shall not apply to any action that becomes final and is no longer subject to appeal on or before October 1, 2009.

Sec. 6. Section 22a-133dd of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Any municipality, any entity created or operating under chapter 130 or 132 or any licensed environmental professional employed or retained by a municipality may enter, without liability, **[**to any person other than the Commissioner of Environmental Protection,**]** upon any property within such municipality for the purpose of performing an

environmental site assessment or investigation on behalf of the municipality or entity created or operating under chapter 130 or 132 if: (1) The owner of such property cannot be located; (2) such property is encumbered by a lien for taxes due such municipality; (3) upon a filing of a notice of eminent domain; (4) the municipality's legislative body finds that such investigation is in the public interest to determine if the property is underutilized or should be included in any undertaking of development, redevelopment or remediation pursuant to this chapter or chapter 130, 132 or 581; or (5) any official of the municipality reasonably finds such investigation necessary to determine if such property presents a risk to the safety, health or welfare of the public or a risk to the environment. The municipality or entity created or operating under chapter 130 or 132 shall give at least forty-five days' notice of such entry before the first such entry by certified mail to the property owner's last known address of record.

(b) A municipality or entity created or operating under chapter 130 or 132 accessing or entering a property to perform an investigation pursuant to this section shall not **[**incur any liability pursuant to section 22a-432 for any preexisting contamination or pollution on such property, provided, however, a municipality may be liable for any pollution or contamination resulting from a negligent or reckless investigation**]** be liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act, provided the municipality (1) did not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution; (2) does not exacerbate the conditions; and (3) complies with reporting of significant environmental hazard requirements pursuant to section 22a-6u. To the extent that any conditions are exacerbated, the municipality shall only be responsible for responding to contamination directly caused by its activities.

(c) The owner of the property may object to such access and entry by the municipality by filing an action in the Superior Court not later than thirty days after receipt of the notice provided pursuant to subsection (a) of this section, provided any objection be limited to the

owner affirmatively representing that it is diligently investigating the site in a timely manner and that any municipal taxes owed will be paid in full.

Sec. 7. Section 32-23zz of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) For the purpose of assisting (1) any information technology project, as defined in subsection (ee) of section 32-23d, which is located in an eligible municipality, as defined in subdivision (12) of subsection (a) of section 32-9t, or (2) any remediation project, as defined in subsection (ii) of section 32-23d, the Connecticut Development Authority may, upon a resolution of the legislative body of a municipality, issue and administer bonds which are payable solely or in part from and secured by: (A) A pledge of and lien upon any and all of the income, proceeds, revenues and property of such a project, including the proceeds of grants, loans, advances or contributions from the federal government, the state or any other source, including financial assistance furnished by the municipality or any other public body, (B) taxes or payments or grants in lieu of taxes allocated to and payable into a special fund of the Connecticut Development Authority pursuant to the provisions of subsection (b) of this section, or (C) any combination of the foregoing. Any such bonds of the Connecticut Development Authority shall mature at such time or times not exceeding thirty years from their date of issuance and shall be subject to the general terms and provisions of law applicable to the issuance of bonds by the Connecticut Development Authority, except that such bonds shall be issued without a special capital reserve fund as provided in subsection (b) of section 32-23j and, for purposes of section 32-23f, only the approval of the board of directors of the authority shall be required for the issuance and sale of such bonds. Any pledge made by the municipality or the Connecticut Development Authority for bonds issued as provided in this section shall be valid and binding from the time when the pledge is made, and revenues and other receipts, funds or moneys so pledged and thereafter received by the municipality or the Connecticut Development Authority shall be

subject to the lien of such pledge without any physical delivery thereof or further act. The lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the municipality or the Connecticut Development Authority, even if the parties have no notice of such lien. Recording of the resolution or any other instrument by which such a pledge is created shall not be required. In connection with any such assignment of taxes or payments in lieu of taxes, the Connecticut Development Authority may, if the resolution so provides, exercise the rights provided for in section 12-195h of an assignee for consideration of any lien filed to secure the payment of such taxes or payments in lieu of taxes. All expenses incurred in providing such assistance may be treated as project costs.

(b) Any proceedings authorizing the issuance of bonds under this section may contain a provision that taxes or a specified portion thereof, if any, identified in such authorizing proceedings and levied upon taxable real or personal property, or both, in a project each year, or payments or grants in lieu of such taxes or a specified portion thereof, by or for the benefit of any one or more municipalities, districts or other public taxing agencies, as the case may be, shall be divided as follows: (1) In each fiscal year that portion of the taxes or payments or grants in lieu of taxes which would be produced by applying the then current tax rate of each of the taxing agencies to the total sum of the assessed value of the taxable property in the project on the date of such authorizing proceedings, adjusted in the case of grants in lieu of taxes to reflect the applicable statutory rate of reimbursement, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies in the same manner as taxes by or for said taxing agencies on all other property are paid; and (2) that portion of the assessed taxes or the payments or grants in lieu of taxes, or both, each fiscal year in excess of the amount referred to in subdivision (1) of this subsection shall be allocated to and when collected shall be paid into a special fund of the Connecticut Development Authority to be used in each fiscal year, in the discretion of the Connecticut Development Authority, to pay the principal of and

interest due in such fiscal year on bonds issued by the Connecticut Development Authority to finance, refinance or otherwise assist such project, to purchase bonds issued for such project, or to reimburse the provider of or reimbursement party with respect to any guarantee, letter of credit, policy of bond insurance, funds deposited in a debt service reserve fund, funds deposited as capitalized interest or other credit enhancement device used to secure payment of debt service on any bonds issued by the Connecticut Development Authority to finance, refinance or otherwise assist such project, to the extent of any payments of debt service made therefrom. Unless and until the total assessed valuation of the taxable property in a project exceeds the total assessed value of the taxable property in such project as shown by the last assessment list referred to in subdivision (1) of this subsection, all of the taxes levied and collected and all of the payments or grants in lieu of taxes due and collected upon the taxable property in such project shall be paid into the funds of the respective taxing agencies. When such bonds and interest thereof, and such debt service reimbursement to the provider of or reimbursement party with respect to such credit enhancement, have been paid in full, all moneys thereafter received from taxes or payments or grants in lieu of taxes upon the taxable property in such development project shall be paid into the funds of the respective taxing agencies in the same manner as taxes on all other property are paid. The total amount of bonds issued pursuant to this section which are payable from grants in lieu of taxes payable by the state shall not exceed an amount of bonds, the debt service on which in any state fiscal year is, in total, equal to one million dollars.

(c) The authority may make grants or provide loans or other forms of financial assistance from the proceeds of special or general obligation notes or bonds of the authority issued without the security of a special capital reserve fund within the meaning of subsection (b) of section 32-23j, which bonds are payable from and secured by, in whole or in part, the pledge and security provided for in section 8-134, 8-192, 32-227 or this section, all on such terms and conditions, including such agreements with the municipality and the developer of

the project, as the authority determines to be appropriate in the circumstances, provided any such project in an area designated as an enterprise zone pursuant to section 32-70 receiving such financial assistance shall be ineligible for any fixed assessment pursuant to section 32-71, and the authority, as a condition of such grant, loan or other financial assistance, may require the waiver, in whole or in part, of any property tax exemption with respect to such project otherwise available under subsection (59) or (60) of section 12-81.

(d) As used in this section, "bonds" means any bonds, including refunding bonds, notes, temporary notes, interim certificates, debentures or other obligations; "legislative body" has the meaning provided in subsection (w) of section 32-222; and "municipality" means a town, city, consolidated town or city or consolidated town and borough.

(e) For purposes of this section, references to the Connecticut Development Authority shall include any subsidiary of the Connecticut Development Authority established pursuant to subsection (l) of section 32-11a, and a municipality may act by and through its implementing agency, as defined in subsection (k) of section 32-222.

[(f) No commitments for new projects shall be approved by the authority under this section on or after July 1, 2010.**]**

[(g)**]** (f) In the case of a remediation project, as defined in subsection (ii) of section 32-23d, that involves buildings that are vacant, underutilized or in deteriorating condition and as to which municipal real property taxes are delinquent, in whole or in part, for more than one fiscal year, the amount determined in accordance with subdivision (1) of subsection (b) of this section may, if the resolution of the municipality so provides, be established at an amount less than the amount so determined, but not less than the amount of municipal property taxes actually paid during the most recently completed fiscal year. If the Connecticut Development Authority issues bonds for the remediation project, the amount established in the resolution shall be

used for all purposes of subsection (a) of this section.

Sec. 8. Subsection (f) of section 22a-133aa of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(f) A "brownfield investigation plan and remediation schedule" means a plan and schedule for investigation, and a schedule for remediation, of any abandoned or underutilized site where redevelopment and reuse has not occurred due to the presence of pollution on the soil or groundwater that requires remediation prior to or in conjunction with the restoration, redevelopment and reuse of the property. The commissioner may determine for each property whether the commissioner will oversee the investigation and remediation of the property or whether such oversight will be delegated to a licensed environmental professional. For each property subject to a covenant under this section based on an approved brownfield investigation plan and remediation schedule, the owner or prospective purchaser shall perform all investigation and remediation activities under the direction of a licensed environmental professional, and shall ensure that all documents required to be submitted contain a written approval of a licensed environmental professional, even at properties for which the commissioner has not delegated oversight to a licensed environmental professional. Each investigation plan and remediation schedule shall provide a schedule for activities including, but not limited to, completion of the investigation of the property in accordance with prevailing standards and guidelines, submittal of a complete investigation report, submittal of a detailed written plan for remediation, completion of remediation in accordance with standards adopted by said commissioner pursuant to section 22a-133k, and submittal of a final remedial action report. At a minimum, the detailed written plan for remediation shall be submitted, pursuant to the schedule, for the commissioner's review and, as appropriate, approval. In any detailed written plan for remediation submitted under this section, the owner or prospective purchaser shall only be required to investigate and remediate conditions existing within the property

boundaries and shall not be required to investigate or remediate any pollution or contamination that may exist or has migrated to sediments, rivers, streams or off-site. If the commissioner approves the detailed written plan for remediation, the plan shall be considered incorporated by reference into the covenant not to sue. The commissioner may require submittal of other plans and reports for the commissioner's review and approval.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2009*	25-68d(d)
Sec. 2	*from passage*	22a-134(1)
Sec. 3	*July 1, 2009*	32-9ee(a)
Sec. 4	*July 1, 2009*	22a-452
Sec. 5	*October 1, 2009*	22a-134b
Sec. 6	*from passage*	22a-133dd
Sec. 7	*July 1, 2009*	32-23zz
Sec. 8	*from passage*	22a-133aa(f)

CE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 $	FY 11 $
Department of Environmental Protection	GF - Cost	Potential Significant	Potential Significant
Department of Economic & Community Development	GF - Savings	150,000-300,000	150,000-300,000
CT. Development Auth. (quasi-public)	See Below - See Below	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 10 $	FY 11 $
Various Municipalities	Savings	Potential Significant	Potential Significant

Explanation

The bill could result in significant costs to the Department of Environmental Protection (DEP) for the following reasons:

(1) it limits the responsibility of municipalities or economic development agencies responding to contamination directly caused by its own activities. This would place the burden of remediation on DEP and could result in significant costs pertaining to initial clean-up and ongoing site monitoring costs;

(2) it creates a new set of circumstances for potential liability for remediation of state properties;

(3) it places additional burden on DEP to prove that incremental pollution is caused by the exacerbation of certain polluted conditions, since it exempts municipalities and certain entities from this investigation. If this proof could not be obtained then the entire cost of the investigation would fall on DEP, and;

(4) it removes a group of property owning entities that the state could target to pay for the investigation and remediation of certain polluted sites. Under this provision, DEP could be responsible to pay for these investigation and remediation costs when no other party can be identified.

The bill also would result in a savings to the Department of Economic and Community Development (DECD) associated with removing the need for DECD to apply for an exemption under DEP's floodplain management statutes. It is estimated that DECD would process approximately six exemptions per year for the reuse of mills at a cost of $25,000-$50,000 per application for a total savings of $150,000-$300,000. Costs include printing, publication, staff, and attorney fees.

Additionally, the bill allows the Connecticut Development Authority (CDA), a quasi-public agency, to permanently issue bonds on behalf of municipalities to refinance brownfield remediation and information technology projects.

Finally, the bill could result in significant savings to municipalities since they are exempt from certain investigation, remediation, and ongoing site monitoring responsibilities under the bill's provisions.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 6097

AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS.

SUMMARY:

This bill expands the capacity of private parties, municipal developers, and state agencies to clean up and redevelop polluted property. It does so by broadening the range of costs that can be recovered by parties remediating contaminated property and specifying criteria for establishing immunity from liability. It also sets deadlines by which parties must act to recover costs.

The bill also:

1. limits the remediation a developer must perform under a covenant not to sue to the contamination within a property's boundaries,

2. extends Transfer Act exemptions to property municipalities (a) take by eminent domain or (b) remediate with state economic development funds,

3. limits liability for municipalities entering and inspecting contaminated property,

4. eliminates the sunset date on a Connecticut Development Authority (CDA) program that finances brownfield projects, and

5. makes it easier for state agencies to develop property in floodplains.

EFFECTIVE DATE: July 1, 2009, except that the Transfer Act changes affecting municipalities and the change affecting covenants

not to sue take effect upon passage and the deadlines for seeking recovery under the Transfer Act take effect October 1, 2009.

§ 4 — LIABILITY FOR WATER AND SOIL POLLUTION CLEANUP COSTS

Eligible Costs

The bill broadens the range of costs municipalities and private developers (i.e., remediators) can recover. It allows them to recover the cost of (1) remediating hazardous substances and (2) investigating the property and monitoring the clean up. The bill also allows remediators to seek recovery and reimbursement before they clean up for the costs they expect to incur.

A substance is hazardous if it (1) meets the federal criteria for "hazardous substance" under the Comprehensive Response, Compensation and Liability Act (CERCLA) (42 USC 9601) or (2) is a petroleum product or by-product for which state remediation standards have been adopted, or for which those standards have a process for calculation of the substance's numeric criteria.

Showing Liability

The bill makes it easier for remediators to show that someone is liable for clean-up costs. It does so by eliminating the need to prove that the responsible party was negligent. Instead, redevelopers can obtain reimbursement and recovery from the party that directly or indirectly contaminated the property.

They can also seek reimbursement and recovery for remediating hazardous substances from any party, regardless of fault, if it:

1. owns or operates the facility, or did so when the hazardous substances were disposed of;

2. arranged for another party to dispose, treat, or transport the hazardous substances it owned at a facility that contained the substances and was owned and operated by someone else; or

3. accepts or accepted hazardous substance to be shipped to another facility for disposal or treatment and from which it is spilled.

A remediator can seek reimbursement for cleanup at a facility if it meets CERCLA's broad criteria, which encompasses a broad range of structures, places, and vehicles where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located. Those criteria do not include any consumer product in consumer use or any vessel (42 USC 9601). The bill exempts from liability recovery facilities where municipal wastes are disposed.

Government agencies owning or operating a facility are exempt from liability if they involuntarily own or control it after exercising a sovereign power. An agency could be in this position when they acquire a property through bankruptcy or tax foreclosure or because it was abandoned.

Deadlines for Seeking Reimbursement or Recovery

The bill sets deadlines by which a remediator must seek reimbursement or recovery. It requires them to do so no later than six years after the physical, on-site cleanup began, or three years after it was finished, whichever is later. It also authorizes the Superior Court to order reimbursement or recovery for reasonable costs a remediator will incur in the future.

The bill prohibits remediators from seeking reimbursement or recovery against any action that has become final and that can no longer be appealed on or before October 1, 2009.

Exemptions from Liability

The bill specifies conditions under which a party is exempted from liability for reimbursement and recovery. Under the bill, the party is exempted if it can show, by a preponderance of the evidence, that the hazardous substance contamination and the subsequent damages were caused solely by one or more of the following:

1. an act of God or war or

2. the act or omission of a third party.

If this third party operated under a contract to move a hazardous substance by rail, then the contracting party must prove, by a preponderance of the evidence that it:

1. exercised due care over the hazardous substance considering its characteristics and all relevant facts and circumstances and

2. took precautions against the third party's foreseeable acts or omissions and the consequences that could foreseeably result from them.

The bill changes the current exemption from liability for people and organizations that help mitigate a contaminated property. Current law exempts them when they help mitigate the actual or threaten discharge of hazardous material. The bill instead exempts them when they do so with respect to hazardous substances or hazardous wastes.

§ 8 — COVENANTS NOT TO SUE

The bill limits the scope of work a party must perform under a covenant not to sue. The covenant exempts the party from having to clean up any contamination at a site discovered after it was remediated according to state standards. To obtain a covenant, the party must submit a schedule and plan for investigating the property and a schedule for remediating it.

The bill limits the remediation plan's scope to conditions existing within the property's boundary and specifically exempts the party from having to investigate or remediate any pollution or contamination that exists or migrated to soils, rivers, streams, or off site locations.

TRANSFER ACT

§ 2 — Exemptions

The bill broadens the Transfer Act exemption for municipalities.

The Transfer Act allows a potentially contaminated property to be sold only after the owner indicates its environmental condition and, if the property is contaminated, a party agrees to clean it up. Current law exempts municipalities from the act when they acquire tax delinquent property by foreclosing on a tax lien or through a tax warrant sale. The bill additionally exempts property municipalities or their development agencies take by eminent domain.

The bill also broadens the exemption that applies to when municipalities convey these properties. The exemption currently applies only to property they acquired to recover back taxes and were cleaned up under DECD's Brownfields Pilot Program. The bill extends it to any property municipalities or their development agencies take by eminent domain or acquired for back taxes, regardless of whether it is being cleaned up under the pilot program.

But this exemption applies only if:

1. the party acquiring the property did not cause or contribute to the pollution and has no connection with the party that did and

2. the property is being cleaned or will be cleaned under the DEP voluntary remediation program.

§ 5 — Deadlines

The bill sets deadlines for parties seeking recovery for damages under the Transfer Act. These actions are usually brought by a party that acquired contaminated property from an owner who did not comply with act's investigation requirements.

The bill sets deadlines by which a party must seek reimbursement or recovery. It requires them to do so no later than six years after the due date for filing the appropriate transfer form under the Transfer Act or the date the form was actually filed. The bill prohibits the party from seeking reimbursement or recovery against any action that has become final and that can no longer be appealed on or before October 1, 2009.

§ 3 — INNOCENT THIRD PARTY

The bill extends the innocent third party designation to any clean up project funded through DECD's Office of Brownfield Remendation and Development. Current law applies the designation to projects funded only under the Brownfield Pilot Program. The designation protects municipalities and economic development agencies from liability for clean up costs. The bill makes them responsible for any contamination they cause by exacerbating the conditions at project sites.

§ 6 — MUNICIPAL INSPECTION POWERS

The bill broadens the circumstances under which municipalities may enter and inspect contaminated property. Under current law, a municipality or a licensed environmental professional (LEP) acting on their behalf, may enter a property without liability to anyone except the Department of Environmental Protection (DEP) commissioner. The bill extends this authority to municipal development agencies. It also allows municipalities, LEPs, or development agencies to enter the property without liability to the commissioner.

The bill specifies the things the municipality or its development agency can be held liable for when it enters and investigates or assesses a property without hiring an LEP. Under current law, it is generally not liable for any preexisting contamination or pollution but is liable if it negligently and recklessly spreads this problem. The bill expands this protection to those statutes under which the DEP commissioner can order remediation or a party can recover its costs for cleaning up the property.

The municipality enjoys this protection only if it:

1. did not cause or contribute to the pollution,
2. does not exacerbate conditions on property, and
3. reports the pollution to the DEP commissioner as the law requires.

If the municipality's activities exacerbate the conditions, it must address only the contamination it caused.

§ 7 — CDA BOND FINANCING FOR MUNICIPAL BROWNFIELD PROJECTS

The bill permanently allows CDA to issue bonds on behalf of municipalities to finance brownfield remediation and information technology projects. Municipalities must repay the bonds with property tax and other revenues. Under current law, CDA's authority to issue the bonds expires on July 1, 2010.

§ 1 — DEVELOPMENT IN FLOODPLAINS

The bill makes it easier for state agencies to develop property in floodplains. By law, an agency must obtain the DEP commissioner's approval before transferring state-owned property in these areas or doing things that could affect land uses there. She may approve the activity if it serves the public interest, will not harm people or property, and complies with the National Flood Insurance program. She may also approve a flood control project that meets these criteria and is more cost effective than one constructed to or above the base flood or base flood for a critical activity.

Under the bill, the commissioner can approve an activity that changes the permitted use of a property subject to DEP clean up requirements. The change must not be considered an intensive use, but the bill does not define this term or specify who determines if the use meets this criterion.

The bill allows the reuse of mills and abandoned or underutilized site to occur without having to obtain an exemption if:

1. the project renovates existing structures,

2. the new structure's footprint does not exceed the former's structure's historic footprint,

3. residential living space is above the 500-year flood elevations, and

4. the renovation complies with the National Flood Insurance Program.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute
Yea 20 Nay 0 (03/12/2009)